IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.860 OF 2003

Smt.Lilavanti Ramesh Dedhia Plaintiff

versus

M/s.Azad Bhavan Restaurant & ors. Defendants

Manish M. Kenia for plaintiff.

None for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 9th August 2005

PC :

1. Learned advocate for plaintiff states that on Summons for Judgement No.508 of 2003 an order was passed on 1st March 2005 by which conditional leave was granted to the defendant to defend the suit subject to their depositing a sum of Rs.69,000/- within four weeks from the date of order. The time expired on 29th March 2005. The amount is not deposited. The order passed by learned Single Judge is not challenged nor is any application made for extension of time to deposit the amount. He submits that the liberty granted to the defendants having not been availed of, the

plaintiff is now entitled to judgement.

2. In my view, after perusing the order passed by this Court it is clear that the defendants were given an opportunity to make good their defence on merits of the case. However, a condition was imposed to deposit the amount as aforesaid. In the light of clear provisions of Order XXXVII of CPC, 1908, the opportunity not being availed of, plaintiff is entitled to a judgement.

3. Non deposit certificate taken on record marked "X" for identification. Original documents along with list marked "X-1" for identification. There will be a decree as prayed. Refund of court fee and computation of advocate’s costs as per rules.

(S.C.DHARMADHIKARI, J.)